

FILE COPY

FILED

DEC 29 1947

CHARLES ELMORE CAMPBELL
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No. 450

PETER L. GUTH,
Petitioner,

vs.

THE TEXAS COMPANY,
Respondent.

MOTION FOR REHEARING.

ALBERT H. FRY,
123 W. Madison Street,
Chicago, Illinois,
Attorney for Petitioner.



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1947.

No. 450

PETER L. GUTH,
Petitioner,

vs.

THE TEXAS COMPANY,
Respondent.

MOTION FOR REHEARING.

Now comes Peter L. Guth, Petitioner, and respectfully asks a rehearing and reconsideration of his petition for Writ of Certiorari, and suggests, that owing to improper and inept pleading and a crowded calendar, this Court must have overlooked some important matters in the said petition, for instance:

1. This Court must have overlooked the fact that it was dealing with the rights of a *cestui que trust*, who

was forced to stand by helplessly, while his property, valued at \$112,000 was destroyed by the trustee, solely to save for the trustee, the cost of putting it back into the formation, a small fraction compared with its value, and the courts deny him any relief. In Heaven's name! We cannot brand that as American justice!

2. This Court must have overlooked the fact that this decision is squarely contrary to the decision of this Court in the case of *Ohio Oil Co. v. Indiana*, 177 N. S. 190, where the defense urged was identical with the defense in this case. May we suggest that if this Court intended to overrule that case, the legal fraternity should be apprised of the weakness in that case, to avoid falling into the error of following a decision which is no longer the law? The opinion of the Circuit Court does not show that weakness.

3. This Court, under a severe load of work, must have overlooked the fact that the denial of the writ makes the opinion of the Circuit Court, the opinion of this Court, and in effect overrules a large number of decisions on the question of damages and of vastly more importance, this decision says, in effect, that a trustee may destroy the property of the trust, solely to save money for itself, without liability, contrary to the spirit of all the decisions in trust cases.

4. This Court, in the rush necessitated by a large calendar, must have overlooked the fact that defendant set up no real defense; admitted that it destroyed gas belonging to another, and their expert witness admitted that it could have been put back into the formation and saved, therefore it was unnecessary to destroy it.

5. This Court must have overlooked the fact that this decision is squarely contrary to the decisions which hold that the royalty owner or lessor is entitled to all the gas which the premises will produce, some of which are set forth in the petition.

6. This Court must have been misled by the fact that, while the defendant processed only a small part of the gas—about 2%—its defense was so worded as to indicate that it tried to save all the gas and did save all, after the processing plant was built, which was untrue. The flares continued long after the plant was built and by far the greater part (98%) was burned after the plant was built, owing to the absence of any attempt on the part of the defendant to save it.

7. This Court, under the strain of a large calendar, failed to notice that the defendant, nor the Circuit Court, could muster a single decision to uphold their pertinent contentions, because none can be found to uphold the unnecessary destruction of the property of another, without compensation.

8. This Court must have overlooked the fact that the defendant destroyed 98% of the gas under the premises, solely that it might make large quick profits through capacity production, which is not permitted in other oil states, because of losses endangered thereby, for which the owners are at the mercy of the defendant, after relief has been denied by the courts.

As a consequence, this petitioner respectfully prays, that a reconsideration and rehearing may be granted; that a writ of certiorari may be granted and that this Court proceed as provided by law and the rules of this Court, in order that justice may be done in the matter; that the judgment below be reversed, with directions to that court to enter a judgment in favor of the plaintiff, as the law and justice dictates. And your petitioner will ever pray,

PETER L. GUTH, Petitioner,

By ALBERT H. FRY,

His Attorney,

123 West Madison Street,
Chicago, Illinois.